

3565

2008 Instructions for Form FTB 3565

Small Business Stock Questionnaire

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2005**, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2005. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to our website at **ftb.ca.gov** and search for **conformity**.

Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

A Purpose

Use form FTB 3565, Small Business Stock Questionnaire, to provide information regarding issuance of stock pursuant to R&TC Section 18152.5.

B Who Must File

A corporation must file form FTB 3565 if it qualifies as a "qualified small business" and issued stock pursuant to R&TC Section 18152.5 during the current taxable year. Complete a separate form FTB 3565 for each issuance of small business stock during the taxable year.

For purposes of this form, all corporations which are members of the same parent-subsidary controlled group shall be treated as one corporation. A parent-subsidary controlled group is defined in IRC Section 1563(a)(1), except that for California tax purposes "more than 50%" shall be substituted for "at least 80%."

C When and Where to File

A corporation is required to file form FTB 3565 along with Form 100, California Corporation Franchise or Income Tax Return, or Form 100W, California Corporation Franchise or Income Tax Return — Water's-Edge Filers. Attach form FTB 3565 to Form 100 or Form 100W and file on or before the due date of the corporate tax return, including extensions.

Under authority granted in R&TC Section 18152.5, the Franchise Tax Board (FTB) requires the corporation to provide a copy of any completed form FTB 3565 to each shareholder that acquired qualified small business stock as part of the stock issuance reported on the completed form FTB 3565 during the current taxable year.

Failure to file this form by the corporation's original or extended return due date for the current taxable year may result in a penalty being assessed to the corporation pursuant to R&TC Section 19133.5. The penalty amount is \$50 per failure to file unless the failure is due to negligence or intentional disregard, then the penalty amount is \$100 per failure to file the form.

Failure of the corporation to file form FTB 3565 will not disqualify the stockholder from excluding gain from the sale or exchange of stock. However, the stockholder bears the burden of proving that the gain from the sale or exchange qualifies for exclusion pursuant to R&TC Section 18152.5 whether or not the corporation files/provides form FTB 3565.

Private Mail Box

Include the Private Mail Box (PMB) in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Specific Instructions

Item F — Principal business activity (PBA)

code — Do not leave blank. Enter the six-digit PBA code from the chart included in the 2008 Form 100, Corporation Tax Booklet or Form 100W, Water's-Edge Booklet. The code should be the number for the specific industry group from which the corporation derives the greatest percentage of California "total receipts." Total receipts means gross receipts plus all other income. The California PBA code may be different than the federal PBA code.

Questions G through L — If the answer to any of these questions is "No," stop. The stock issuance does not qualify under R&TC Section 18152.5. The corporation does not need to complete the rest of this form and should not attach it to the Form 100 or Form 100W.

Question K — A domestic corporation is defined in IRC Section 7701(a)(4) as any corporation created or organized in the United States or under the law of the United States or of any State.

Question O — A qualified trade or business is any trade or business **other than:**

- Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of one or more of its employees.
- Any banking, insurance, financing, leasing, investing, or similar business.
- Any farming business (including the business of raising or harvesting trees).
- Any business involving the production or extraction of products of a character with respect to which a percentage depletion deduction is allowable under IRC Section 613 or 613A.
- Any business of operating a hotel, motel, restaurant, or similar business.

Question P — For the purpose of calculating the total value of the assets, any ownership of, dealing in, or renting of, real property shall not be treated as the active conduct of a qualified trade or business.

Question R — Enter the aggregate subscription amount of non-treasury stock the corporation issued during the entire taxable year.

Question S — Enter the amount included in Question R that the corporation received for that part of the stock issuance that qualifies as small business stock under the provisions of R&TC Section 18152.5.

The amounts entered in Question R and Question S should not include the value of stock issued in exchange for stock.

The corporation should maintain records to show that the stock issuance met the requirements of R&TC Section 18152.5.

Question T — If there was more than one issuance of small business stock during the current taxable year, enter the date of the first issuance here.

Question U — If there was more than one issuance of small business stock during the current taxable year, enter the date of the last issuance here.